

REMARKS

Claims 1-26 are pending in the present application. Claims 1-10, 13-18 and 20-23 were rejected. Claims 11, 12 and 19 are allowed. Claims 24-26 are objected to. By this Amendment, claims 1, 13, 20, 21, 22, 23, 24, 25 and 26 have been amended. This application continues to include claims 1-26.

Applicant thanks the Examiner for allowing claims 11, 12 and 19.

Applicant further thanks the Examiner for indicating that claims 24-26 contain allowable subject matter, and would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claim. Applicant has so amended claims 24-26. Accordingly, claims 24-26 are believed to be in condition for allowance.

Reconsideration of the rejection of claims 1-10, 13-18 and 20-23 is respectfully requested.

Claims 1-4, 13-16 and 22-23 were rejected under 35 U.S.C. §102(b) as being anticipated by Scherl, et al. (U.S. Patent No. 4,411,015; hereinafter, Scherl).

For brevity, Applicant incorporates herein by reference the arguments set forth in the Amendment dated January 31, 2008. Notwithstanding, Applicant has amended claims 1, 13, 20, 21, 22, and 23 to further distinguish over the cited references.

Claim 1 has been amended to clarify that a concentration ratio for the image “indicates a relative level of smoothness of a distribution of an entire population of elements in the image”. (Emphasis added). Support for the amendment of claim 1 may be found in Applicant’s Specification at paragraphs 35 and 36, and the Abstract.

In the present final Office Action, the Examiner took issue with Applicant’s Example that demonstrates the distinction of the present invention from that of Scherl, to which the Examiner

provides further Examples to demonstrate that cases may exist that could yield a “concentration ratio” having the same result as the present invention. The Examiner further states that:

the Examiner understands that the Applicant is attempting to find specific and isolated exceptions for which “K” may perhaps contradict the Applicant’s representation of concentration ratio and smoothness. However, so long as there does exist one example on the side of the Examiner for which “K” does not contradict the Applicant’s representation of concentration ratio and smoothness, “K” (and thus Scherl) anticipates claim 1.

Applicant respectfully submits, however, that many there are many examples that can be made by Applicant in demonstrating the dissimilarities between the equation of Scherl and the present invention, not just “specific and isolated exceptions”. For example, in the Example 4 provided by the Examiner, it is clear that it does not matter what the distribution is below the cut-off value of 204, the only concern is the quantity of values above and the quantity of values below the cut-off value. In other words, the same results for K are obtained even if, rather than 10 values at level 200 (as in Example 4) below the cut-off of 204, there were 5 values at level 20, 2 values at level 50, 3 values at level 200; or 6 values at level 100 and 4 values at level 200; and so on. The point is that the equation, i.e., K, of Scherl does not indicate a relative level of smoothness of a distribution of an entire population of elements in the image, and thus does not yield a “concentration ratio” in the context of the present Application.

As set forth in Applicant’s specification at paragraph 0036, “A CR is a number that indicates how concentrated or widespread the population of elements is, such as, for example, how wide spread the distribution of a histogram is. Generally, if the population is distributed evenly across all levels, the CR is a large number. Likewise, if the entire population is concentrated at a few levels, the CR is generally a small number.” (Emphasis added). Thus, in

context, the concentration ratio for the image indicates a relative level of smoothness of a distribution of an entire population of elements in the image, which is not the case with Scherl. More particularly, in Scherl in determining K,  $i_{\max}$  is the maximum brightness value, and the brightness values of interest in forming the ratio yielding K are those brightness values in the range of  $0.8 i_{\max}$  to  $i_{\max}$ .

Thus, it is respectfully submitted that the variable K of Scherl (see the equation for determining ( K) in Scherl at column 3, line 20) does not indicate a relative level of smoothness of a **distribution** of an entire population of elements in the image, as recited in claim 1 as amended.

Accordingly, for at least the reasons set forth above, it is respectfully submitted that claim 1 as amended is not anticipated by Scherl under 35 U.S.C. §102(b), and is allowable in its present form.

Claims 2-4 are believed allowable due to their dependence from base claim 1.

Independent claim 13 as amended is believed allowable for substantially the same reasons set forth above with respect to claim 1.

Claims 14-16 are believed allowable due to their dependence from base claim 13.

Independent claim 22 as amended is believed allowable for substantially the same reasons set forth above with respect to claim 1.

Independent claim 23 as amended is believed allowable for substantially the same reasons set forth above with respect to claim 1.

Accordingly, for at least the reasons set forth above, it is respectfully requested that the rejection of claims 1-4, 13-16 and 22-23 as being anticipated by Scherl, et al. under 35 U.S.C. §102(b) be withdrawn.

Claims 5-10 and 17-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Scherl in view of Hartmann, et al. (U.S. Pub. No. 2002/0067857 A1; hereinafter, Hartmann).

Claims 5-10 depend, directly or indirectly, from base claim 1. Claims 5-10 are believed allowable in their present form, since Hartmann does not overcome the deficiencies of Scherl with respect to claim 1.

Claims 17 and 18 depend from base claim 13. Claims 17 and 18 are believed allowable in their present form, since Hartmann does not overcome the deficiencies of Scherl with respect to claim 13.

Accordingly, for at least the reasons set forth above, it is respectfully requested that the rejection of claims 5-10 and 17-18 as being unpatentable over Scherl in view of Hartmann under 35 U.S.C. §103(a) be withdrawn.

Claims 20 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Poggio, et al. (U.S. Patent No. 5,642,431); hereinafter, Poggio) in view of Scherl.

Claim 20 as amended recites, in part, “applying controlled, equalization to an image generated by the image capture device, where the controlled, histogram equalization uses a concentration ratio that indicates a relative level of smoothness of a distribution of an entire population of elements in the image.” (Emphasis added).

Poggio is directed to the detection of faces, and classifies an image as a face or non-face. As set forth in Poggio, at column 4, lines 18-23, “A multi-layer perceptron (MLP) network 304, discussed in connection with FIG. 3, identifies new window patterns as faces or non-faces by taking as input a vector of distance measurements and outputting either a first state, if the vector arises from a face pattern, or a second state, if the vector arises from a non-face pattern.”

(Emphasis added). Nowhere in Poggio, however, is there any discussion of a technique that uses a concentration ratio, as recited in claim 20.

The Examiner asserts that Scherl discloses a concentration ratio. However, as set forth above with respect to claim 1, Scherl does not disclose, teach or suggest, “a concentration ratio that indicates a relative level of smoothness of a distribution of an entire population of elements in the image”, as recited in claim 20.

Accordingly, the combination of Poggio and Scherl would not render claim 20 obvious.

Independent claim 21, as amended, recites in part, “a controlled, equalization processor coupled to the image capture device, that uses a concentration ratio that indicates a relative level of smoothness of a distribution of an entire population of elements in the image.” (Emphasis added).

Claim 21 is believed allowable for substantially the same reasons set forth above with respect to claim 20.

Accordingly, for at least the reasons set forth above, it is respectfully requested that the rejection of claims 20 and 21 as being unpatentable over Poggio in view of Scherl under 35 U.S.C. §103(a) be withdrawn.

For the foregoing reasons, Applicant believes that the present application is in condition for allowance in its present form, and it is respectfully requested that the Examiner so find and issue a Notice of Allowance in due course.

In the event Applicant has overlooked the need for an extension of time, an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefor and authorizes that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

Should any question concerning any of the foregoing arise, the Examiner is invited to telephone the undersigned at (317) 894-0801.

Respectfully submitted,

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